

IC 5-10.2-2

Chapter 2. The Retirement Funds

IC 5-10.2-2-1

Scope; purpose

Sec. 1. Scope; Purpose. (a) This article applies to the Indiana state teachers' retirement fund and the public employees' retirement fund. Each retirement fund covered by this article is a separate retirement fund managed by its board under its retirement fund law. Each board shall make and publish regulations which are appropriate to the efficient administration of this article. The obligations of the state and political subdivisions for benefit payments are specified in each retirement fund law.

(b) Each fund is an independent body corporate and politic. A fund is not a department or agency of the state but is an independent instrumentality exercising essential government functions.

(c) For purposes of IC 34-13-2, IC 34-13-3, and IC 34-13-4, each board, each fund, and all employees of each board or fund are public employees (as defined in IC 34-6-2-38). All employees of each board or fund employed within a classification covered by a labor agreement to which the state is a party shall continue to remain subject to the terms and conditions of that agreement and any successor labor agreements entered into by the state.

(d) The benefits specified in this article and the benefits from the Social Security Act provide the retirement, disability, and survivor benefits for public employees and teachers. However, this article does not prohibit a political subdivision from establishing and providing before January 1, 1995, and continuing to provide after January 1, 1995, retirement, disability, and survivor benefits for the public employees of the political subdivision independent of this article if the political subdivision took action before January 1, 1995, and was not a participant in the public employees' retirement fund on January 1, 1995, under this article or IC 5-10.3.

As added by Acts 1977, P.L.53, SEC.2. Amended by P.L.66-1995, SEC.2; P.L.65-1995, SEC.2; P.L.119-2000, SEC.2.

IC 5-10.2-2-1.5

Qualification under Internal Revenue Code

Sec. 1.5. Each retirement fund covered by this article shall satisfy the qualification requirements in Section 401 of the Internal Revenue Code, as applicable to each retirement fund. In order to meet those requirements, each fund is subject to the following provisions, notwithstanding any other provision of the retirement fund law:

- (1) Each board shall distribute the corpus and income of the fund to members and their beneficiaries in accordance with the retirement fund law.
- (2) No part of the corpus or income of a fund may be used for or diverted to any purpose other than the exclusive benefit of the members and their beneficiaries.
- (3) Forfeitures arising from severance of employment, death, or

for any other reason may not be applied to increase the benefits any member would otherwise receive under the retirement fund law.

(4) If a fund is terminated, or if all contributions to a fund are completely discontinued, the rights of each affected member to the benefits accrued at the date of the termination or discontinuance, to the extent then funded, are nonforfeitable.

(5) All benefits paid from a retirement fund shall be distributed in accordance with the requirements of Section 401(a)(9) of the Internal Revenue Code and the regulations under that section. In order to meet those requirements, each retirement fund is subject to the following provisions:

(A) The life expectancy of a member, the member's spouse, or the member's beneficiary may not be recalculated after the initial determination for purposes of determining benefits.

(B) If a member dies before the distribution of the member's benefits has begun, distributions to beneficiaries must begin no later than December 31 of the calendar year immediately following the calendar year in which the member died.

(C) The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of the Internal Revenue Code.

(6) The board may not:

(A) determine eligibility for benefits;

(B) compute rates of contribution; or

(C) compute benefits of members or beneficiaries;

in a manner that discriminates in favor of members who are considered officers, supervisors, or highly compensated, as prohibited under Section 401(a)(4) of the Internal Revenue Code.

(7) Benefits paid under this chapter may not exceed the maximum benefits specified by Section 415 of the Internal Revenue Code.

(8) The salary taken into account under this chapter may not exceed the applicable amount under Section 401(a)(17) of the Internal Revenue Code.

(9) The board may not engage in a transaction prohibited by Section 503(b) of the Internal Revenue Code.

As added by P.L.55-1989, SEC.8.

IC 5-10.2-2-2

Separate accounts and subaccounts

Sec. 2. (a) The board of the public employees' retirement fund shall maintain the following separate accounts:

(1) The annuity savings account.

(2) The retirement allowance account.

(b) The board of the Indiana state teachers' retirement fund shall maintain the following two (2) separate accounts:

(1) The pre-1996 account.

(2) The 1996 account.

(c) Within each account specified in subsection (b), the board of the Indiana state teachers' retirement fund shall maintain the following separate subaccounts:

(1) The annuity savings account.

(2) The retirement allowance account.

As added by Acts 1977, P.L.53, SEC.2. Amended by P.L.35-1985, SEC.3; P.L.54-1993, SEC.5.

IC 5-10.2-2-2.5

Investment guidelines and limits established by boards; commingling of assets

Sec. 2.5. (a) Each board may establish investment guidelines and limits on all types of investments (including, but not limited to, stocks and bonds) and take other actions necessary to fulfill its duty as a fiduciary for all assets under its control, subject to the limitations and restrictions set forth in section 18 of this chapter, IC 5-10.3-5-3, and IC 21-6.1-3-9.

(b) Each board may commingle or pool assets with the assets of any other persons or entities. This authority includes, but is not limited to, the power to invest in commingled or pooled funds, partnerships, or mortgage pools. In the event of any such investment, the board shall keep separate detailed records of the assets invested. Any decision to commingle or pool assets is subject to the limitations and restrictions set forth in IC 5-10.3-5-3 and IC 21-6.1-3-9.

As added by P.L.43-1997, SEC.1. Amended by P.L.61-2002, SEC.2; P.L.224-2003, SEC.185.

IC 5-10.2-2-3

Annuity savings account; guaranteed programs; alternative investment programs

Sec. 3. (a) The annuity savings account consists of:

(1) the members' contributions; and

(2) the interest credits on these contributions in the guaranteed fund or the gain or loss in market value on these contributions in the alternative investment program, as specified in section 4 of this chapter.

Each member shall be credited individually with the amount of the member's contributions and interest credits.

(b) Each board shall maintain the annuity savings account program in effect on December 31, 1995 (referred to in this chapter as the guaranteed program). In addition, the board of the Indiana state teachers' retirement fund shall establish and maintain a guaranteed program within the 1996 account. Each board may establish investment guidelines and limits on all types of investments (including, but not limited to, stocks and bonds) and take other actions necessary to fulfill its duty as a fiduciary of the annuity savings account, subject to the limitations and restrictions set forth in IC 5-10.3-5-3 and IC 21-6.1-3-9.

(c) Each board shall establish alternative investment programs

within the annuity savings account of the public employees' retirement fund, the pre-1996 account, and the 1996 account, based on the following requirements:

- (1) Each board shall maintain at least one (1) alternative investment program that is an indexed stock fund and one (1) alternative investment program that is a bond fund.
- (2) The programs should represent a variety of investment objectives under IC 5-10.3-5-3.
- (3) No program may permit a member to withdraw money from the member's account except as provided in IC 5-10.2-3 and IC 5-10.2-4.
- (4) All administrative costs of each alternative program shall be paid from the earnings on that program.
- (5) A valuation of each member's account must be completed as of the last day of each quarter.

(d) The board must prepare, at least annually, an analysis of the guaranteed program and each alternative investment program. This analysis must:

- (1) include a description of the procedure for selecting an alternative investment program;
- (2) be understandable by the majority of members; and
- (3) include a description of prior investment performance.

(e) A member may direct the allocation of the amount credited to the member among the guaranteed fund and any available alternative investment funds, subject to the following conditions:

- (1) A member may make a selection or change an existing selection under rules established by each board. A board shall allow a member to make a selection or change any existing selection at least once each quarter.
- (2) The board shall implement the member's selection beginning the first day of the next calendar quarter that begins at least thirty (30) days after the selection is received by the board. This date is the effective date of the member's selection.
- (3) A member may select any combination of the guaranteed fund or any available alternative investment funds, in ten percent (10%) increments.
- (4) A member's selection remains in effect until a new selection is made.
- (5) On the effective date of a member's selection, the board shall reallocate the member's existing balance or balances in accordance with the member's direction, based on:
 - (A) for an alternative investment program balance, the market value on the effective date; and
 - (B) for any guaranteed program balance, the account balance on the effective date.

All contributions to the member's account shall be allocated as of the last day of that quarter in accordance with the member's most recent effective direction. The board shall not reallocate the member's account at any other time.

(f) When a member who participates in an alternative investment

program transfers the amount credited to the member from one (1) alternative investment program to another alternative investment program or to the guaranteed program, the amount credited to the member shall be valued at the market value of the member's investment, as of the day before the effective date of the member's selection. When a member who participates in an alternative investment program retires, becomes disabled, dies, or suspends membership and withdraws from the fund, the amount credited to the member shall be the market value of the member's investment as of the last day of the quarter preceding the member's distribution or annuitization at retirement, disability, death, or suspension and withdrawal, plus contributions received after that date.

(g) When a member who participates in the guaranteed program transfers the amount credited to the member to an alternative investment program, the amount credited to the member in the guaranteed program is computed without regard to market value and is based on the balance of the member's account in the guaranteed program as of the last day of the quarter preceding the effective date of the transfer. When a member who participates in the guaranteed program retires, becomes disabled, dies, or suspends membership and withdraws from the fund, the amount credited to the member shall be computed without regard to market value and is based on the balance of the member's account in the guaranteed program as of the last day of the quarter preceding the member's distribution or annuitization at retirement, disability, death, or suspension and withdrawal, plus any contributions received since that date plus interest since that date.

As added by Acts 1977, P.L.53, SEC.2. Amended by P.L.35-1985, SEC.4; P.L.40-1986, SEC.1; P.L.58-1987, SEC.1; P.L.55-1989, SEC.9; P.L.54-1993, SEC.6; P.L.43-1997, SEC.2; P.L.195-1999, SEC.9; P.L.285-2001, SEC.1.

IC 5-10.2-2-4

Interest

Sec. 4. (a) Interest shall be credited and compounded at least annually on all amounts credited to the member in the guaranteed program. For the guaranteed program, the board shall annually establish an interest credit rate equal to or less than the investment income earned.

(b) The market value of each alternative investment program shall be allocated at least annually to the members participating in that program.

(c) Contributions to the guaranteed program and the alternative investment programs shall be invested as of the last day of the quarter in which the contributions are received. Contributions to the guaranteed program shall begin to accumulate interest at the beginning of the quarter after the quarter in which the contributions are received.

(d) When a member retires or withdraws with a balance in the guaranteed program, a proportional interest credit determined by the

board shall be granted for the period elapsed since the last interest date on that balance.

As added by Acts 1977, P.L.53, SEC.2. Amended by Acts 1977(ss), P.L.1, SEC.1; Acts 1980, P.L.28, SEC.1; P.L.35-1985, SEC.5; P.L.43-1997, SEC.3; P.L.195-1999, SEC.10.

IC 5-10.2-2-5 Repealed

(Repealed by P.L.55-1989, SEC.67.)

IC 5-10.2-2-6

Retirement allowance accounts

Sec. 6. (a) The retirement allowance account of the public employees' retirement fund consists of the retirement fund, exclusive of the annuity savings account. For the public employees' retirement fund, separate accounts within the retirement allowance account shall be maintained for contributions made by the state and by each political subdivision.

(b) The retirement allowance account of the pre-1996 account consists of the pre-1996 account, exclusive of the annuity savings account.

(c) The retirement allowance account of the 1996 account consists of the 1996 account, exclusive of the annuity savings account. For the 1996 account, separate accounts within the retirement allowance account shall be maintained for contributions made by the state, by each school corporation, and by each institution.

As added by Acts 1977, P.L.53, SEC.2. Amended by P.L.55-1989, SEC.10; P.L.54-1993, SEC.7.

IC 5-10.2-2-7

Transfer of accounts

Sec. 7. (a) When a member retires or dies in service under conditions which entitle a beneficiary or spouse to survivor benefits and if the member or survivor chooses to receive an annuity from the fund, the annuity savings account shall be charged with the amount credited to him in the account. This amount shall be credited to the retirement allowance account, and the annuity shall be paid from this account.

(b) When:

- (1) a member of the public employees' retirement fund who is an employee of a participating political subdivision; or
- (2) a member of the Indiana state teachers' retirement fund who is covered by the 1996 account and is an employee of a school corporation or other institution;

retires or dies in service under conditions which entitle a beneficiary or spouse to survivor benefits, the political subdivision's, school corporation's, or other institution's account in the retirement allowance account shall be charged with an amount equal to the actuarial reserve of the member's retirement pension or the survivor benefit. The amount charged shall be credited to the retirement allowance account, and the retirement pension or survivor benefit

shall be paid from this account.

As added by Acts 1977, P.L.53, SEC.2. Amended by P.L.35-1985, SEC.6; P.L.54-1993, SEC.8.

IC 5-10.2-2-8

Payment and computation of benefits for combined creditable service

Sec. 8. (a) For a member who retires with service in more than one (1) retirement fund, the last retirement fund in which the member rendered service shall pay the retirement benefits to the member. The pension shall be computed and vested status shall be determined on the basis of combined creditable service. The annuity, if any, shall be computed on the basis of amounts credited to the member in annuity savings accounts in all funds. The funds in which the employee was a member shall pay to the fund responsible for payment of benefits:

(1) the amount credited to him in the annuity savings account; and

(2) the proportionate actuarial cost of his pension.

(b) A member of the Indiana state teachers' retirement fund who has served as a member of the general assembly and who retires after June 30, 1980, may choose at his retirement date whether to retire from the Indiana state teachers' retirement fund or from the public employees' retirement fund. If he chooses to retire from the public employees' retirement fund, that fund is responsible for the payment of benefits provided in IC 5-10.2-4, and the Indiana state teachers' retirement fund shall pay to the public employees' retirement fund:

(1) the amount credited to that member in the annuity savings account in the Indiana state teachers' retirement fund; and

(2) the proportionate actuarial cost of his pension.

As added by Acts 1977, P.L.53, SEC.2. Amended by Acts 1980, P.L.28, SEC.2; P.L.35-1985, SEC.7.

IC 5-10.2-2-9

Actuarial investigation and valuation

Sec. 9. (a) The funds may employ a common actuary or actuarial service.

(b) At least once in every five (5) years and in every year in which this article is amended so that benefits are changed, the actuary shall make a separate actuarial investigation for each fund and for the 1996 account of the mortality, service, and compensation experience of the members and their beneficiaries and shall make a valuation of the assets and liabilities of the fund or account, using the "entry-age normal cost" method.

As added by Acts 1977, P.L.53, SEC.2. Amended by P.L.54-1993, SEC.9.

IC 5-10.2-2-10

Mortality tables

Sec. 10. Based on the actuarial investigation and valuation in section 9 of this chapter, each board shall adopt mortality rates,

service and such other tables as the board considers necessary for the implementation of this article. Each board shall adopt a single mortality table for both men and women that reasonably reflects each fund's mortality experience.

As added by Acts 1977, P.L.53, SEC.2. Amended by P.L.55-1989, SEC.11.

IC 5-10.2-2-11

Employer contribution rates; unfunded accrued liability

Sec. 11. (a) Based on the actuarial investigation and valuation in section 9 of this chapter, each board shall determine:

- (1) the normal contribution for the employer, which is the amount necessary to fund the pension portion of the retirement benefit;
- (2) the rate of normal contribution;
- (3) the unfunded accrued liability of the public employees' retirement fund, the pre-1996 account, and the 1996 account, which is the excess of total accrued liability over the fund's or account's total assets, respectively; and
- (4) the rates of contribution for the state expressed as a proportion of compensation of members, which would be necessary to:
 - (A) amortize the unfunded accrued liability of the state for thirty (30) years or for the time period requested by the budget agency or the governor; and
 - (B) prevent the state's unfunded accrued liability from increasing.

(b) Based on the information in subsection (a), each board may determine, in its sole discretion, contributions and contribution rates for individual employers or for a group of employers.

(c) The board's determinations under subsection (a) are subject to section 1.5 of this chapter.

As added by Acts 1977, P.L.53, SEC.2. Amended by P.L.55-1989, SEC.12; P.L.54-1993, SEC.10.

IC 5-10.2-2-12

State appropriation

Sec. 12. (a) The general assembly shall appropriate biennially for each fund covered by this article that satisfies the conditions of section 1.5 of this chapter the sum of the following:

- (1) the state's normal contribution for its employees to the public employees' retirement fund, the pre-1996 account, and the 1996 account, as determined in section 11 of this chapter;
- (2) at least the anticipated increase in the state's unfunded accrued liability in each fund, other than the pre-1996 account, as estimated by each board under the procedures specified in section 11 of this chapter; and
- (3) the state's obligation as estimated by each board for disability benefits and benefits payable under retirement fund laws in effect before April 1, 1955.

The request for this sum for each fund shall be submitted to the budget agency as one (1) item for each fund. Each board shall submit to the agency its actuarial investigation and valuation and any other actuarial information to support the request.

(b) The biennial appropriation specified in subsection (a) of this section shall be paid annually to each fund covered by this article that satisfies the conditions of section 1.5 of this chapter in equal installments in July of each year of the biennium.

(c) The biennial appropriation under this section shall be deposited in the trust of each fund and used only as provided in section 1.5 of this chapter.

As added by Acts 1977, P.L.53, SEC.2. Amended by P.L.54-1993, SEC.11; P.L.119-2000, SEC.3.

IC 5-10.2-2-13

Custodial agreements for securities; servicing of mortgages; securities lending program

Sec. 13. Custodial Agreements for Securities; Servicing of Mortgages; Securities Lending Program. (a) Each board may enter into a custodial agreement with a trust company or state or national bank to provide for the custody and servicing of the securities and other investments under the control of the board.

(b) The agreement may contain such terms as the board considers desirable including:

- (1) the custody, safeguarding or indemnity, servicing, handling and delivery of the securities and other investments; and
- (2) the payment of taxes, fees of the custodian, and other expenses and payments required in connection with the securities and investments.

(c) Any person, firm, limited liability company, or corporation authorized to service mortgage loans guaranteed by the federal housing administration may be authorized by the board to service a mortgage loan held by the fund.

(d) Each board may authorize its custodian to enter into a securities lending program agreement, under which the securities held by each fund may be loaned in order to provide revenue to the fund. Such an agreement must require that collateral be pledged in excess of the total market value of the loaned securities.

As added by Acts 1977, P.L.53, SEC.2. Amended by Acts 1980, P.L.28, SEC.3; P.L.8-1993, SEC.55.

IC 5-10.2-2-14

Transfer of benefits to financial institutions; rollover

Sec. 14. (a) Upon written authorization of a retired member or a retired member's survivor or beneficiary, each fund may satisfy a claim for benefits by directly depositing the amount of the benefits payable to the retired member's or the survivor's or beneficiary's account in any state or federal chartered financial institution (as defined in IC 28-1-1-3(1)).

(b) All forms and accounting procedures for implementing

subsection (a) must be approved by the state board of accounts, and any contract or agreement between a fund and a state or federal chartered financial institution (as defined in IC 28-1-1-3(1)) must be approved by the attorney general and the governor.

(c) Notwithstanding any other provision of the retirement fund law, to the extent required by Internal Revenue Code Section 401(a)(31), as added by the Unemployment Compensation Amendments of 1992 (P.L.102-318), and any amendments and regulations related to Section 401(a)(31), each retirement fund shall allow participants and qualified beneficiaries to elect a direct rollover of eligible distributions to another eligible retirement plan. *As added by Acts 1979, P.L.35, SEC.1. Amended by P.L.10-1993, SEC.3; P.L.42-1993, SEC.2; P.L.1-1994, SEC.18.*

IC 5-10.2-2-15

Repealed

(Repealed by P.L.1-2002, SEC.172.)

IC 5-10.2-2-16

Meetings of board members; communication alternatives

Sec. 16. (a) This section applies to any meeting of the board.

(b) A member of the board may participate in a meeting of the board using any means of communication that permits:

- (1) all other board members participating in the meeting; and
- (2) all members of the public physically present at the place where the meeting is conducted;

to simultaneously communicate with each other during the meeting.

(c) A member of the board who participates in a meeting under subsection (b) is considered to be present at the meeting.

(d) The memorandum of the meeting prepared under IC 5-14-1.5-4 must also state the name of each member who:

- (1) was physically present at the place where the meeting was conducted;
- (2) participated in the meeting using a means of communication described in subsection (b); and
- (3) was absent.

As added by P.L.246-2001, SEC.2.

IC 5-10.2-2-17

Confidentiality of fund records

Sec. 17. Fund records of individual members and membership information are confidential, except for the name and years of service of a fund member. However, this section does not prohibit a board from providing fund records to an association described in IC 5-10.3-8-10 or IC 21-6.1-5-17.

As added by P.L.246-2001, SEC.3.

IC 5-10.2-2-18

Investment in high growth companies; goal percentages

Sec. 18. (a) As used in this section, "high growth company" means

a sole proprietorship, firm, corporation, partnership, limited liability company, limited liability partnership, joint venture, trust, syndicate, or other business unit or association that:

(1) is primarily focused on commercialization of research and development, technology transfers, or the application of new technology or is determined by the department of commerce to have significant potential to:

- (A) bring substantial capital into Indiana;
- (B) create jobs;
- (C) diversify the business base of Indiana; or
- (D) significantly promote the purposes of this chapter in any other way;

(2) has had an average annual net worth of less than twenty million dollars (\$20,000,000) in each of the last two (2) calendar years; and

(3) is not engaged in a business involving:

- (A) real estate;
- (B) real estate development;
- (C) insurance;
- (D) professional services provided by an accountant, a lawyer, or a physician;
- (E) retail sales, except when the primary purpose of the business is the development or support of electronic commerce using the Internet; or
- (F) gas and oil exploration.

A company that meets the definition of a high growth company under this subsection shall be considered to meet the definition even if affiliated with one (1) or more other companies that do not meet the definition and regardless of whether any of the affiliated companies is engaged in a business involving the matters described in subdivision (3).

(b) As used in this section, "Indiana high growth company" means a high growth company as defined in subsection (a) that:

(1) has its headquarters in Indiana; and

(2) has:

- (A) at least fifty percent (50%) of its employees residing in Indiana; or
- (B) at least seventy-five percent (75%) of its assets located in Indiana.

(c) If the board decides to allocate part of the fund assets to funds investing in high growth companies, the board is strongly encouraged to establish the following:

- (1) A goal for investment in funds investing in Indiana high growth companies of at least twenty-five percent (25%) of the amount allocated to funds investing in high growth companies.
- (2) A preference for investments described in subdivision (1) that are started in or assisted by Indiana universities and colleges.

(d) The board has five (5) years after the date the goals in subsection (c) are adopted to achieve the goal percentages.

(e) The board is not required to achieve the goal percentages under subsection (c) if the board, exercising financial and fiduciary prudence, determines that sufficient appropriate investments in privately held equity or debt assets are not available in Indiana.

(f) This section expires July 1, 2013.

As added by P.L.224-2003, SEC.186.